TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 136.

EDWARD T. GUY, PLAINTIFF IN ERROR,

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE.

IN ERROR TO THE BALTIMORE CITY COURT, STATE OF MARYLAND.

FILED APRIL 21, 1877.

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1 STATE OF MARYLAND,
City of Baltimore, sct:

At a session of the Baltimore City court, in the eighth judicial circuit of the State of Maryland, begun and held at the court-house in the city of Baltimore, in and for the city aforesaid, on the second Monday of September (being the eleventh day of the same month), in the year of our Lord one thousand eight hundred and seventy-six—present, the honorable Campbell W. Pinkney, associate judge of the supreme bench of Baltimore City, assigned to and presiding in the Baltimore City court; S. Sands Mills, esq., sheriff; N. C. Robertson, clerk—among other were the following proceedings, to wit:

EDWARD T. GUY, APPELLANT,
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE, appellees.

Be it remembered that heretofore, to wit, on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and seventy-six, E. Beatty Graff, esquire, one of the justices of the peace of
2 the State of Maryland, in and for the city of Baltimore, in pursuance of the act of the assembly in such case made and provided, transmitted to the Baltimore City court here the proceedings of a plea which was lately depending before him, between the mayor and city coucil of Baltimore, plaintiff, and Edward T. Guy, defendant, wherein the said justice of the peace gave judgment for the said plaintiffs against the said defendant, and from which said judgment the said defendant prayed an appeal unto the Baltimore City court here, which said proceedings are as follows, to wit:

Writ of summons.

THE STATE OF MARYLAND,
City of Baltimore, sct:

To any police officer or constable of said city, greeting:

You are hereby commanded to summon Captain Guy, of the schooner George S. Powell, if he shall be found in your bailiwick, to appear
3 before me, the subscriber, a justice of the peace of the said State, in and for the city aforesaid, on the 29th day of June, 1876, at 4 o'clock p. m., to answer unto the mayor and city council of Baltimore in a plea of debt for violating the 10th section of art. 22, Baltimore City code, relating to paying wharfarge on cargoes under sec. 33 of city code, and so forth.

Hereof fail not at your peril, and have you then and there this summons.

Witness the subscriber, a justice of the peace of the said State in and for the city aforesaid, who hath hereunto set his hand and seal this 29th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

E. BEATTY GRAFF. [SEAL.]

On the back of the aforegoing writ of summons is the following endorsement, to wit: Summoned, Serg't Drost, M. D.

1 STATE OF MARYLAND,
City of Baltimore, set:

At a session of the Baltimore City court, in the eighth judicial circuit of the State of Maryland, begun and held at the court-house in the city of Baltimore, in and for the city aforesaid, on the second Monday of September (being the eleventh day of the same month), in the year of our Lord one thousand eight hundred and seventy-six—present, the honorable Campbell W. Pinkney, associate judge of the supreme bench of Baltimore City, assigned to and presiding in the Baltimore City court; S. Sands Mills, esq., sheriff; N. C. Robertson, clerk—among other were the following proceedings, to wit:

EDWARD T. GUY, APPELLANT,
vs.
THE MAYOR AND CITY COUNCIL OF BALTIMORE, appellees.

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2 the State of Maryland, in and for the city of Baltimore, in pursuance of the act of the assembly in such case made and provided, transmitted to the Baltimore City court here the proceedings of a plea which was lately depending before him, between the mayor and city council of Baltimore, plaintiff, and Edward T. Guy, defendant, wherein the said justice of the peace gave judgment for the said plaintiffs against the said defendant, and from which said judgment the said defendant prayed an appeal unto the Baltimore City court here, which said proceedings are as follows, to wit:

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To any police officer or constable of said city, greeting:

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Hereof fail not at your peril, and have you then and there this summons.

Witness the subscriber, a justice of the peace of the said State in and for the city aforesaid, who hath hereunto set his hand and seal this 29th day of June, in the year of our Lord one thousand eight hundred and seventy-six.

E. BEATTY GRAFF. [SEAL.]

On the back of the aforegoing writ of summons is the following endorsement, to wit: Summoned, Serg't Drost, M. D.

Judgment.

July 1st, 1876. Defendant appeared and trial. Judgment for the plaintiff for $20.00 penalty, and $1.40 costs.

July 1st, 1876. Appeal prayed to the Baltimore City court and appeal bond given as follows:

Appeal bond.

Know all men by these presents, that we, Edward T. Guy and George Frame, all of Baltimore City, State of Maryland, are held and firmly bound unto the mayor & city council of Baltimore, in the just and full sum of fifty dollars, current money of the United States, to be paid to the said mayor & city council of Baltimore, or to its certain attorney or assigns. To which payment, well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and an administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this 8th day of July, in the year eighteen hundred and seventy-six.

Whereas the above-bound Edward T. Guy thinks himself aggrieved by a judgment rendered against him on July 1st, 1876, by E. Beatty Graff, esquire, one of the justices of the peace for the said city, for the sum of twenty dollars debt as penalty & costs; from which judgment the said Edward T. Guy is about to appeal to the next city court for the city of Baltimore, before the judge thereof:

Now the condition of the above obligation is such, that if the said Edward T. Guy shall not prosecute his appeal at the next city court for said city with effect, according to the directions of the act entitled "An act for the speedy recovery of small debts out of court, and to repeal the acts of assembly therein mentioned," and also pay and satisfy the said mayor & city council of Baltimore, its attorney or assigns, in case the said judgment shall be affirmed, as well the debt, penalty, damages, and costs adjudged by the said E. Beatty Graff, as also all costs and damages that shall be awarded by the said city court, when the said appeal shall be heard, tried, and determined, then the above bond to be and remain in full force and virtue; otherwise to be of none effect.

EDWARD T. GUY. [SEAL.]
GEORGE FRAME. [SEAL.]

Signed, sealed, & delivered in the presence of—
E. BEATTY GRAFF.

And now here comes into the said Baltimore City court the said appellant, Edward T. Guy, by his attorneys, Messrs. Frame & Brown, and the said appellees, the mayor & city council of Baltimore, by its attorney, John V. L. Findley, esquire, and thereupon the case was submitted to the court on an agreed statement of facts without the aid of a jury. Therefore it is considered by the court here, that the said mayor and city council of Baltimore do recover against the said Edward T. Guy as well the sum of twenty dollars penalty as the sum of five dollars and ninety cents adjudged by the court here unto the said appellees for their costs and charges by it about its suit in this behalf expended, and the said appellant in mercy, and that the said appellee have thereof its execution, &c.

MEMORANDUM.—Oct. 14, 1876, judgment affirmed.
Test:

N. C. ROBERTSON, *Clerk.*

7 *Bill of exceptions.*

The above-entitled case being heard before the Baltimore City court without the aid of a jury, and being submitted to the court on an agreed statement of facts filed in the case as follows:

STATEMENT OF FACTS.

The following statement of facts is agreed upon by the counsel of the several parties to this case: That Edward T. Guy, the appellant, is a resident of Accomac County, in the State of Virginia, and a citizen of said State, and that at the time of institution of this suit, to wit, in June, eighteen hundred and seventy-six, he was master and part owner of the schooner George S. Powell, and was engaged in sailing said schooner from said Accomac County, Virginia, to the city of Baltimore, laden with cargoes of potatoes raised and produced in said State of Virginia, and that arriving in Baltimore in his said schooner in
8 said month of June, he landed on Pratt street wharf, one of the public wharves in said city of Baltimore, belonging to said city, not "that part of Pratt street wharf reserved," &c., in the act hereafter cited, a cargo of such potatoes raised and produced in said State of Virginia, amounting to two hundred and twenty barrels; that George T. McDorman, a harbor-master, duly appointed by the mayor and city council of Baltimore, and in charge of said wharf, demanded of said Edward T. Guy, the appellant, the sum of four dollars and forty cents as wharfage upon said potatoes so landed by him upon said wharf; that in making said demand said McDorman claimed authority under an act of the general assembly of Maryland of 1827, chapter 162, entitled "An act to appoint State wharfingers in the city of Baltimore, and to authorize the collection of wharfage in certain cases in the said city," section 4 of which act, which is contained also in the Maryland
9 code of public local laws, article IV, section 945, provides as follows:

"The mayor and city council of Baltimore shall be, and they are hereby, empowered and authorized to regulate, establish, charge, and collect, to the use of the said mayor and city council, such rate of wharfage as they may think reasonable of and from all vessels resorting to or lying at landing, depositing or transporting goods or articles other than the productions of this State, on any wharf or wharves belonging to said mayor and city council or any public wharf in the said city other than the wharves belonging to or rented by the State, and that part of Pratt street wharf heretofore reserved for the use of the citizens of this State, anything in any former act of assembly to the contrary notwithstanding."

And also claimed authority under an ordinance of the mayor and city council of Baltimore "to regulate the public wharves in the city
10 of Baltimore," passed in pursuance of said act of assembly, approved July 27th, 1858, the provisions of which ordinance so far as applicable to this case are contained in the Baltimore City Code, Article XXII, sections 33 and 35, pages 231 and 232, and are as follows:

"§ 33. All goods, wares, or merchandise landed on the public wharves from on board any vessel or vessels lying at said wharves, or placed thereon for the purpose of shipment or exposure for sale, shall pay the following rates of wharfage for each and every day the same may remain thereon, or any less time, excepting, however, fire-wood and lumber, the rates of which are to be accounted for the whole time allowed

by ordinance for the same to remain on the wharves, to be paid by the owner or consignee, or in the event of there being none, the master of the vessel, and all goods shipped from one vessel to another, one-half price to be paid by the shipper, bags of coffee, ginger, pepper, or
11 any other articles in similar bags, each one cent; bales of merchandise, cotton, dry goods, &c., each four cents; barrels of every description containing merchandise or otherwise, each two cents; boxes of sugar, dry goods, and foreign drugs, gums, &c., each three cents; boxes of raisins, soap, tin, candles, &c., each one-half cent; castings of all kinds, per ton, fifteen cents; carriages, wagons, or carts, each twelve and one-half cents; coal per ton of twenty-eight bushels, plaster, &c., five cents; cord-wood, per cord, six and one-quarter cents; cordage, per ton, fifteen cents; crates of ware, or hampers of bottles, &c., each four cents, dyewoods of all kinds per ton, fifteen cents; grain per bushel, and all other articles sold by the bushel, other than the product of the State of Maryland, one-half cent; grindstones, each one cent; hides, per hundred, thirty cents; leather, per hundred sides, fifteen cents; hogsheads and pipes of every description, containing merchandise or otherwise, each six and one-quarter cents; hemp,
12 iron or steel, per ton, five cents; kegs of nails, shot, raisins, butter, lard, &c., each one cent; millstones, each twenty-five cents; salt, in sacks, each one cent; shingles and laths, per thousand, two cents; tierces of every description, containing merchandise or otherwise, each four cents; all other goods not enumerated in the above list, to pay in proportion."

"§ 35. All vessels resorting to or lying at landing, depositing or transporting goods or articles other than the production of this State, on or from any wharf or wharves belonging to the mayor and city council, or any public wharf in the said city, other than the wharves belonging to or rented by the State, shall be chargeable with the wharfage as fixed by this ordinance, upon all goods or articles landed or deposited on any wharf or wharves belonging to the said mayor and city council; and the master or owner of the vessels so depositing, landing or transporting said goods or articles, shall be responsible for the same."

That under the act of the general assembly of Maryland of
13 1860, chapter 226 (Code of Public General Laws, Article XCVI, section 18), potatoes were and are required to be sold in this State "by weight at the rate of fifty-six pounds to the bushel," under penalty of a fine of ten dollars.

That said Edward T. Guy, the appellant, being advised that said first mentioned act of the general assembly of Maryland and said ordinance passed thereunder were, as regards the sections of the same respectively above set forth, unconstitutional and in violation of the Constitution of the United States and therefore void, and that the exaction of said wharfage thereunder from him on said potatoes as goods and articles other than the product of the State of Maryland was unlawful, refused to pay the same as being contrary to the Constitution of the United States.

That thereupon the mayor and city council of Baltimore, on
14 June 29th, 1876, caused a writ of summons in an action of debt to issue against said Edward T. Guy, the appellant, whereby he was summoned to appear before E. Beatty Graff, esquire, a justice of the peace of the State of Maryland, in and for Baltimore City, the said mayor and city council claiming to recover against him the penalty of twenty dollars under an ordinance of the mayor and city council of Baltimore (Revised Ordinances of 1858, No. 23, section 6), which section is

contained in the Baltimore City Code, Article XXII, section 10, page 225, and is as follows: § "It shall not be lawful for any vessel landing or receiving cargo at any of the wharves within the limits of the city, which is required to pay wharfage on cargo or vessel to the harbor masters of the city of Baltimore, to leave the wharf where said vessel receives or discharges her cargo without furnishing said harbor master, upon application, with his manifest or bills of lading of cargo, and
15 paying the wharfage on the same, together with wharfage and port charges on the vessel, under a penalty of twenty dollars to be collected, as other small debts are collected, from the captain, commander, owner, or consignees of said vessels so offending."

That on July 1st, 1876, said Edward T. Guy, the appellant, did appear before said E. Beatty Graff, esquire, to defend said action; that said George T. McDorman appeared as a witness on behalf of the mayor and city council, and proved that he was a harbor-master appointed by the said mayor and city council; that he had rendered to said Edward T. Guy, appellant, a bill for wharfage under said sections of Article XXII of the Baltimore City Code, and that payment of the same had been refused; that said Edward T. Guy, the appellant, then and there, by his counsel, made defence of such non-payment and justified his refusal, objecting that the act of assembly first mentioned above, and the
16 ordinance of the mayor and city council passed under it, were, as regarded the sections of the same respectively under which the mayor and city council claimed and acted in this case, in violation of the Constitution of the United States, and therefore void; that the judgment of the said E. Beatty Graff, esquire, overruled this defence and was given in favor of the mayor and city council of Baltimore against the said Edward T. Guy in the sum of twenty dollars penalty, and one dollar and forty cents costs; that said costs were paid by said Edward T. Guy, and a bond filed by him with satisfactory security for the prosecution of his appeal in this court.

It is admitted that the wharfage charge, levied as aforesaid against said Edward T. Guy, the appellant, for potatoes grown in Virginia so landed by him, is not and never has been made or levied by the
17 city of Baltimore or its harbor masters or other officers against parties landing potatoes or other articles grown in the State of Marylaud.

JOHN V. L. FINDLAY,
For Mayor & City Council of Baltimore.
FRAME & BROWN,
Attorney for Appellant.

The appellant prayed the court to grant, as the law of the case, the following propositions:

1st. That the act of the general assembly of Maryland of 1827, chapter 162, section 4, and the portions of the ordinances of the mayor and city council passed thereunder, cited in the statement of facts, which impose a special wharfage charge on extra-State grown products, are repugnant to the third clause of the eighth section of article I of the Constitution of the United States, and unlawful, and the verdict should be for the appellant.

Rejected.

18 2nd. That the act of the general assembly of Maryland of 1827, chapter 162, section 4, and the portions of the ordinances of the mayor and city council passed thereunder, cited in the statement of facts, which impose a special wharfage charge on extra-State grown

products, are repugnant to the second clause of the tenth section of article I of the Constitution of the United States, and unlawful, and the verdict should be for the appellant.

Rejected.

3rd. That the act of the general assembly of Maryland of 1827, chapter 162, section 4, and the portions of the ordinances of the mayor and city council passed thereunder, cited in the statement of facts, which impose a special wharfage charge on extra-State grown products, are an infringement upon the rights, privileges and immunities of Edward T. Guy, the appellant, claimed under the first clause of the second section of article IV of the Constitution of the United States, and
19 are unlawful, and the verdict should be for the appellant.

Rejected.

4th. That if the court should find the facts to be as set forth in the agreed statement of facts, then its verdict should be for the appellant.

Rejected.

But the said court refused to grant the propositions aforesaid, and to the refusal of the court to grant said propositions and each of them the appellant excepted, and prayed the court to sign and seal this his bill of exceptions, which is accordingly done this 14th day of October, eighteen hundred and seventy-six.

CAMPBELL W. PINKNEY. [SEAL.]

And thereupon the said Edward T. Guy produced the writ of the United States for the correcting of errors of and upon the premises, commanding that the judgment aforesaid, so as aforesaid ren-
20 dered, with all things thereunto relating, be transmitted to the Supreme Court of the United States, the tenor of which said writ is as follows, to wit:

Writ of error.

UNITED STATES OF AMERICA, *to wit:*

The President of the United States to the honorable Campbell W. Pinkney, judge of the Baltimore city court, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Baltimore city court before you, being the highest court of law or equity of the State of Maryland, in which a decision could be had in the said suit between Edward T. Guy, appellant, and The Mayor and City Council of Baltimore, appellee, wherein was drawn in question the validity of a statute of and an authority exercised under said State, on the ground of their being repugnant to the Constitution of the United States, and the decision
21 was in favor of such their validity, and wherein was drawn in question the construction of the Constitution of the United States, and the decision was against the right, privilege and exemption specially set up and claimed under certain clauses of the said Constitution, a manifest error hath happened to the great damage of the said Edward T. Guy, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the

second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being
22 inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the second Monday of October, in the year of our Lord one thousand eight hundred and seventy-six.

Oct. 16th, 1876.

JAS. W. CHEW,
Clerk Circuit C. U. S. for the 4th Circuit, in and for the Marlyand District.

The aforegoing writ of error is endorsed by the judge of the Baltimore city court, to wit: "Allowed by Campbell W. Pinkney, assigned judge of the Baltimore city court."

Whereupon the said Edward T. Guy, by his attorney aforesaid, filed in said cause the following bond, to wit:

23 *Bond.*

Know all men by these presents, that we, Edward T. Guy, of Accomac County, in the State of Virginia, and George Frame, of Baltimore City, in the State of Maryland, are held and firmly bound unto the State of Maryland in the full and just sum of one hundred dollars, to the payment of which sum well and truly to be made, we hereby bind ourselves, and each of us, and the heirs, executors, administrators, and assigns of each of us, jointly and severally, firmly by these presents, sealed with our seals and executed this 21st day of October, eighteen hundred and seventy-six.

Whereas in a suit in the Baltimore city court, appealed from a judgment of E. Beatty Graff, esquire, a justice of the peace of the State of Maryland, in and for Baltimore City, wherein the above bound Edward T. Guy was appellant, and the mayor and city council of Baltimore was appellee, in the September term thereof, A. D. eighteen
24 hundred and seventy-six, the judgment rendered in said court was against said Edward T. Guy, the appellant; and whereas said Baltimore city court is the highest court of the State of Maryland in which a decision in the suit can be had; and whereas in said suit was drawn in question the validity of a statute of and of an authority exercised under the State of Maryland on the ground of their being repugnant to the Constitution of the United States, and the decision was in favor of such their validity; and whereas, accordingly, said Edward T. Guy has caused a writ of error to be sued out of the Supreme Court of the United States to the said Baltimore city court, to remove the record in the said suit for trial by the said Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Edward T. Guy shall not cause a transcript of the record and
25 proceedings to be transmitted to the next Supreme Court of the United States, and prosecute his said writ of error with effect, and also satisfy and pay to the said mayor and city council of Baltimore, in case the said writ of error shall be dismissed, as well the damages and costs adjudged in the Baltimore city court aforesaid, as also all

damages and costs that may be awarded by the Supreme Court of the United States aforesaid, then the said bond to be of full force and virtue, otherwise to be of no effect.

Witness our hands and seals the day and year aforesaid.

E. T. GUY. [SEAL.]
GEORGE FRAME. [SEAL.]

Test:

N. C. ROBERTSON, *Clerk.*

On the back whereof it is thus endorsed, to wit: Bond approved. N. C. Robertson, clerk.

In pursuance whereof a record of the judgment aforesaid, with all things thereunto relating, is hereby transmitted to the Supreme
26 Court of the United States accordingly.

Test:

N. C. ROBERTSON, *Clerk.*

STATE OF MARYLAND,
City of Baltimore, sct:

I, N. C. Robertson, clerk of the Baltimore city court, do hereby certify that the aforegoing is a full, true, and entire transcript taken from the record and proceedings of the said court in the therein entitled cause.

In testimony whereof, I hereunto set my hand and affix the seal of the Baltimore city court aforesaid, on this thirteenth day of November, eighteen hundred and seventy-six.

[SEAL.]

N. C. ROBERTSON,
Clerk of the Balto. City Court.

Appellant's cost, $7.85, paid by appellant.
Appellee's " $5.90, not paid.
Record " $13.00, paid by appellant.

(Indorsement on cover:) No. 136. Edward T. Guy, plaintiff in error, vs. The Mayor and City Council of Baltimore. Maryland Baltimore city court. Filed 21st April, 1877.

IN THE

Supreme Court of the United States.

No. 136. OCTOBER TERM, 1879.

EDWARD T. GUY, *Plaintiff in Error,*

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE.

In Error to the Baltimore City Court, State of Maryland.

FREDERICK J. BROWN,
For Plaintiff in Error.

IN THE

Supreme Court of the United States.

No. 136. OCTOBER TERM, 1879.

EDWARD T. GUY, *Plaintiff in Error,*

vs.

THE MAYOR AND CITY COUNCIL OF BALTIMORE

In Error to the Baltimore City Court, State of Maryland.

BRIEF OF PLAINTIFF IN ERROR.

Statement of Facts.

This is an action of debt instituted by the defendant in error before a Justice of the Peace of the State of Maryland, to recover against plaintiff in error a penalty of twenty dollars under an ordinance of the mayor and city council of Baltimore, because he, being the captain of a certain vessel laden with a cargo of potatoes grown in Virginia, took his vessel from the wharf where she had discharged, without paying to the city's harbor-master a certain wharfage charge on her cargo. In making his demand for the wharfage, the harbor-master claimed authority under an act of the General Assembly of Maryland of 1827, chapter 162, entitled "An Act to appoint State wharfingers in the city of Baltimore, and to authorize the collection of wharfage in certain cases in the said city."

Section 4 of the act provided as follows:

"The mayor and city council of Baltimore shall be, and they are hereby, empowered and authorized to regulate, establish, charge and collect, to the use of the said mayor and city council, such rate of wharfage as they may think reasonable, of and from all vessels resorting to or lying at, landing, depositing or transporting goods or articles other than the productions of this State, on any wharf or wharves belonging to said mayor and city council, or any public wharf in the said city, other than the wharves belonging to or rented by the State."

In pursuance of this act of Assembly (Record page 9,) the mayor and city council passed the ordinance quoted in the record, the essential parts of which are as follows:

"Section 33. All goods wares, or merchandise, landed on the public wharves from on board of any vessel or vessels lying at said wharves * * shall pay the following rates of wharfage for each and every day the same may remain thereon * * to be paid by the owner or consignee, or in the event of there being none, the master of the vessel, and all goods shipped from one vessel to another, one-half to be paid by the shipper, bags of coffee, ginger, pepper or any other articles in similar bags, each one cent; bales of merchandise * * * &c., each four cents; barrels of every description containing merchandise or otherwise, each two cents; boxes of sugar, * * &c., each three cents; * * * grain per bushel and all other articles sold by the bushel, *other than the product of the State of Maryland*, one-half cent; grindstones, each one cent;" &c., &c., &c.,; "all other goods not enumerated in the above list to pay in proportion."

"Section 35. All vessels resorting to or lying at, landing, depositing or transporting goods or articles other than the production of this State, on or from any wharf or wharves belonging to the mayor and city council, or any public wharf in the said city, * * shall be chargeable with the wharfage as fixed by this ordinance, upon all goods or articles landed,

References are to marginal number of page.

* * and the master or owner of the vessels so * * landing * * shall be responsible for the same."

Under a subsequent act of the General Assembly of Maryland, 1860 chapter 226, potatoes are required to be sold "by weight at the rate of fifty six pounds to the bushel," (Record page 13,) so that it appears that the wharfage charge of $4.40 upon the 220 barrels or 880 bushels brought in upon the Virginia schooner, was made under that clause of the ordinance which imposes the charge of one-half cent upon "grain per bushel and all other articles sold by the bushel, *other than the product of the State of Maryland*," though the charge would come to the same thing if it be taken to have been made under the clause imposing the charge of two cents upon "barrels of every description, containing merchandise or otherwise."

Notwithstanding the slovenly construction of the 33d section of the ordinance in bringing in the vital words, "other than the product of the State of Maryland" half way down in the list of articles and packages to be charged, it is perfectly plain that these words apply to each article and package enumerated.

In the first place, the act of Assembly, "to authorize the collection of wharfage in certain cases," (Record page 8), *in pursuance of which* the ordinance was passed, (Record page 10), only authorized the mayor and city council "to charge * * wharfage" upon "vessels * * landing * * goods or articles other than the productions of this State," &c., and the city of Baltimore must be held to have intended to keep within the limits thus marked out for it, and not to have passed beyond them to enact an ordinance which would have been out of the scope of its powers, and therefore void. Legislation to affect extra-state products was the sole object of the act, and must be held to have been the sole object of the ordinance.

Moreover it is admitted, (Record page 8), that the harbor-master in demanding the wharfage charge, claimed authority under the act of Assembly as well as under the ordinance.

In the second place, the 35th section makes it clear that all the articles mentioned are meant to be "other than the product of the State," for the 33d section having imposed the charge upon the goods "to be paid by the *owner or consignee*, [of the goods] or in the event of there being none, the master of the vessel," &c.; the 35th section enacts that "*all vessels* * * landing * * articles other than the production of this State, shall be chargeable with the wharfage *as fixed by this ordinance*, upon all goods or articles landed, * * * and the master or owner of the vessels so * * landing, * * shall be responsible for the same."

In the third place, the construction of the ordinance has, as a practical question, been long since settled by the city, for it is admitted, (Record page 16), that the wharfage charge is not and never has been made or levied against parties landing potatoes or other articles grown in the State of Maryland.

It is hardly necessary to argue that this Court will not refuse to take cognizance of a violation of the Constitution merely because the ordinance in which such violation occurs may be drawn up in awkward or inaccurate language.

Assignment of Errors.

The plaintiff in error assigns the following as error, to wit:

The Court erred in its rejection of the prayers of the appellant, (plaintiff in error,) Record pp. 17, 18, 19, for the act and ordinance are clearly repugnant to the Constitution of the United States, as plaintiff in error contends,

1st. as a regulation of commerce.

2dly. as a levy by the State of an impost or duty on imports (so far as the goods discriminated against may be foreign goods.)

3dly. as an interference with the privileges and immunities of citizens.

In other words, so far as the act and ordinance affect foreign commerce, they are obnoxious to the eighth and tenth sections

of the first article; and so far as they affect commerce between the States, they are obnoxious to the eighth section of the first article, and the second section of the fourth article, assuming that under the decision in Woodruff vs. Parham, the second clause of section ten of the first article does not apply to articles imported from another State.

Conceding that a city owning wharves may exact a compensation for the use of them (*i. e.* wharfage) as well as individuals, and that the State may regulate this compensation so as to prevent extortion, yet, "in the exercise of this right, care must be had that it is not made to cover a violation of the Federal Constitution."

Cannon vs N. O., 20 Wal. 577, 582.

In that case the ordinance complained of violated the Constitution, inasmuch as it imposed a *tax upon tonnage* under cover of an ordinance to collect wharfage, but any other violation of the Constitution would be equally fatal.

It is no answer to say that an individual owner of a wharf may charge what rates of wharfage he pleases, and may discriminate according to his own whims against the citizens or products of other countries or States. Here we are dealing with *a law*, a solemn act of the Legislature and an ordinance passed in pursuance of it, to regulate wharfage upon public wharves. The city of Baltimore has no power to make any regulations in the premises except such power as is given by the act of Assembly, and that act is passed solely to enable the city to do an unconstitutional thing, which the State itself could not do.

It is submitted that no authority unreversed can be found justifying such legislation as this, or reconciling it with the Constitutional provisions and prohibitions relied upon.

As to the "privileges and immunities of citizens" clause.

In The Canal Boat Ann Ryan, 7 Benedict 20, the Court of the Eastern District of New York passed upon an act of that State which fixed certain rates of wharfage, with the pro-

viso that "all canal boats navigating the canals of this State, and vessels known as North river barges, shall pay the same rates as heretofore." It was objected that the statute made an unjust discrimination in favor of canal boats owned by citizens of the State, and was, for that reason, repugnant to the Constitution of the United States.

"The Act does make a discrimination in favor of the canal navigation of the State, but it makes none in favor of the citizens of the State. The discrimination is between the employment of the boats, not between the persons owning or navigating the boats. All persons, without regard to citizenship, are placed upon the same footing, and it cannot be said that the Statute, either in its language or its results, creates a discrimination in favor of the citizens of the State of New York."

The Court implies unmistakably what would be the effect of such a discrimination in favor of the citizens of a State.

But we are not left to implication in the matter, nor to arguments drawn from the decisions of District Courts. The cases of Woodruff vs. Parham, 12 Wal. 123, and Hinson vs. Lott, 12 Wal. 148, effectually dispose of this question. To quote from the language of the Court in the former case, page 140, "There is no attempt to discriminate injuriously against the products of other States, or the rights of their citizens, and the case is not, therefore, an attempt to fetter commerce among the States, or to deprive the citizens of other States of any privilege or immunity possessed by citizens of Alabama. But a law having such operation would, in our opinion, be an infringement of the provisions of the Constitution which relate to those subjects, and therefore void." But this clause of the Constitution received its fullest discussion in the case of Ward vs. Maryland, 12 Wal. 418, which reiterates the doctrine of Woodruff vs. Parham and Hinson vs. Lott, and declares that among the "privileges and immunities", the clause secures the right of a citizen of one State "to be exempt from any higher taxes or excises than are imposed by the State upon its own citizens."

"The Statute * * imposes a discriminating tax upon all persons trading in the manner described * * who are not permanent residents of the State, * * the Statute is repugnant to the Federal Constitution, and invalid for that reason."

It is supposed that defendant in error may, in the absence of more direct authorities, rely upon the case of McCready vs. Virginia, 94 Wal. 391, but surely extended argument is not needed to show that the doctrine of that case rests upon another principle, and did not unsettle or question the previous decisions of this Court.

As to the conflict which exists between the Constitution and the legislation now in question of Maryland and of the city of Baltimore, so far as concerns the eighth and tenth sections of the first article, (and probably the ninth section as well), it is so clearly shown by the decisions of this Court that it will be enough to cite the leading cases, without entering upon any analysis or discussion of them. The following cases are relied upon as conclusive of the points now in issue:

Brown vs. State of Maryland, 12 Wheaton 419.
Steamship Co. vs. Port Wardens, 6 Wal. 31.
State Tonnage Tax Cases, 12 Wal. 204.
Reading Railroad vs. Pennsylvania, 15 Wal. 232.
Peete vs. Morgan, 19 Wal. 581.
Cannon vs. New Orleans, 20 Wal. 577.
Railroad Co. vs. Maryland, 21 Wal. 456.
Welton vs. Missouri, 91 U. S. 275.
Henderson vs. Mayor, &c., 92 U. S. 259.
Cooke vs. Pennsylvania, 97 U. S. 566.
See also Packet Co. vs. Keokuk, 95 U. S. 80.

It is of interest to know that the legislation in question was pronounced by Chancellor Bland of Maryland, so long ago as 1831, to be unconstitutional, by reason of its repugnancy to the 8th, 9th and 10th sections of the first article of the Constitution. The Wharf Case, 3 Bland 361, 371, 374,

375. After referring to the provisions of the Constitution, the eminent Chancellor says: "These rules being fundamental, cannot be evaded in any manner whatever; no preference can be given by requiring the payment of tolls or wharfage of any ships or goods coming from other states of the Union, not demandable on those of this state; nor can duties on tonnage of any kind be exacted of ships or goods coming into our ports from any other of the United States, or from any foreign country, without the consent of Congress. * * * Upon these principles, I hold the act of Assembly which authorizes the Mayor and City Council of Baltimore to charge and collect such wharfage as they may think reasonable, from all vessels lying at or landing articles, *other than the productions of this state*, on any wharf belonging to the Mayor and City Council, or any public wharf of the city, to be unconstitutional and void."

It is of interest also to know that the Legislatures of Maryland which first passed these discriminating laws, were quite aware of their being in conflict with the Constitution, and relied upon the ratification of Congress which was from time to time given.

The first act of Assembly on the subject, (passed before the Constitution was adopted, or even formed,) is found in the laws of 1783, (April Term) ch. xxiv.

"An Act appointing wardens for the port of Baltimore-town in Baltimore county."

"Section 10. Said wardens shall * * cause the bason and harbour * * to be cleared * * and all obstructions * * to be removed * * and, towards defraying the charges and costs thereof, to impose on every vessel entering or clearing at said port one penny per tun, * * said rate to continue till a sufficient sum shall be raised for defray-the expence aforesaid"

A supplement to this act, passed 1788, ch. xx, after the State's adoption of the Constitution, gives to the wardens power "to levy * * on every vessel arriving at said port * * except pilot boats and vessels not coming from sea, be-

longing to citizens of this State, a sum * * not exceeding two pence * * per tun; * * provided always that no * * regulations * * directed to be made by this act, be repugnant to the laws of this government * * "

In 1791 (Laws of 1791, ch. LX,) was passed "An act empowering the wardens of the port of Baltimore to levy and collect the duty therein mentioned." It repeals the parts cited of the previous acts, and gives the wardens power to "levy * * on every vessel arriving * * of sixty tun or more, a sum of money not exceeding two cents per tun * * "

"Section 4. Provided always that this act of assembly shall not operate and take effect until the same be ratified and confirmed by an act of the congress of the United States."

In 1790, (ch. 43) Congress gave its assent for one year to the above recited supplement of 1788.

The Act of 1791, ch. LX, was ratified and confirmed in 1796, by an Act of Congress (ch. 26) to continue for three years, and was further continued in 1800 by an Act of Congress (ch. 15) for eight years.

In 1813, (ch. 118) the General Assembly passed "An act to prohibit the collection of certain wharfages within the City of Baltimore."

"Section 1. It shall not hereafter be lawful for the Mayor and City Council of Baltimore to collect or impose any tax, duty, toll or wharfage upon any goods, wares or merchandise, or other articles, for the passing the same over any of the public wharves within the said city."

But in 1827, the act of Assembly heretofore quoted was passed to renew the obnoxious discriminations, and this time the sanction of Congress was neither invited nor obtained, and the act has stood on the statute books ever since, not unquestioned, as we have seen, but unrepealed.

Plaintiff in error contends that the legislation in question should now be declared by this Court, as it was pronounced by Chancellor Bland, "unconstitutional and void."

FREDERICK J. BROWN,
For Plaintiff in Error.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1879. No. 136.

EDWARD T. GUY

vs.

THE MAYOR AND CITY COUNCIL

OF BALTIMORE.

JAMES L. McLANE,
City Counsellor,
For Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1870. No. 130.

LEONARD TILTON,

vs.

THE MAYOR AND CITY COUNCIL

OF BALTIMORE.

ABSTRACT OF RECORD.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1879. No. 136.

EDWARD T. GUY

vs.

THE MAYOR AND CITY COUNCIL

OF BALTIMORE.

APPELLEE'S BRIEF.

This case comes on writ of error to the Baltimore City Court—the highest Court of the State of Maryland in which a decision in the suit could be had.

The suit was an action of debt brought by the Mayor and City Council of Baltimore before a Justice of the Peace, to recover from the appellant (Guy) the penalty, imposed by a city ordinance, for landing a cargo of produce on one of the city wharves without paying wharf charges, as established by law. Judgment for the penalty, $20 and costs, was given for the plaintiff, and defendant appealed to the Baltimore City Court.

There was no dispute as to the facts, and the case was tried before the Court upon an agreed statement, as shown on page 3 of the record.

The appellant was a citizen of the State of Virginia, and, as master and part owner of the schooner George S. Powell, trading between Accomac county in that State and the city of Baltimore, in the month of June, 1876, landed and deposited a vessel load of potatoes upon one of the public wharves belonging to the Mayor and City Council of Baltimore, but refused to pay wharf charges, amounting to $4.40, prescribed by city ordinance for such use of the wharf. The potatoes so landed by the appellant were raised or grown in the State of Virginia.

Upon these facts the appellant claimed that the Act of Assembly of Maryland, authorizing the city of Baltimore to charge and collect wharfage on goods or articles other than the productions of this State, when landed or deposited on wharves belonging to the city, "imposed a special wharfage charge on extra-State grown products," and was repugnant to the several provisions of the Constitution of the United States, which provide—

1. That Congress shall have power to regulate commerce with foreign nations, and among the States.

Article 1, section 8, clause 3.

2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws.

Article 1, section 10, clause 2.

3. The citizens of each State shall be entitled to all privileges or immunities of citizens in the several States.

Article 4, section 2, clause 1.

The several prayers setting forth these propositions of law were rejected by the Court, and the judgment in favor of the city affirmed. (Pages 5 and 6 record.)

I.

It is respectfully submitted that the Statute of Maryland and the city ordinance regulating the charges for the use and hire of wharves belonging to the city of Baltimore, are nothing more than the lawful exercise of authority over property owned by the municipal corporation, and are in no way repugnant to any provision of the Constitution of the United States.

The city charter enacts that—

"The Mayor and City Council of Baltimore may purchase and hold real, personal and mixed property, or dispose of the same for the benefit of said city."

Public Local Laws, article 1, section 1.

The public wharves of the city of Baltimore were acquired and are held by the city in pursuance of this authority. They are the undisputed property of the municipal corporation, and are maintained at the city's cost for the express purpose of being let or hired to those having need of such facilities. Its right to collect wharfage for their use was, at at an early day, recognized by the Court of Appeals of Maryland, and declared to rest upon the city's ownership of the property in the wharves, and its obligation, *as proprietor*, to regulate and repair the wharves and adjacent streets, "the natural fund to defray the expenditure of which being wharfage—*an income derived from those who enjoy the benefit of this expenditure.*"

Dugan vs. Mayor, 5 Gill & John. 376.

The legislation now complained of, and which is the same that was considered by the Court of Appeals in Dugan vs. Mayor, proceeds altogether upon the theory of the city's ownership of the wharves as property.

The Statute provides that—

"The Mayor and City Council of Baltimore shall be and they are hereby empowered and authorized to regulate, estab-

lish, charge and collect, to the use of the said Mayor and City Council, such wharfage as they may think reasonable of and from all vessels *resorting to* or *lying* at, *landing, depositing* or *transporting goods* or *articles*, other than the productions of this State, *on any wharf* or *wharves belonging to* said Mayor and City Council; or any public wharf in said city other than the wharves belonging to or rented by the State, and that part of Pratt street wharf heretofore reserved for the use of the citizens of this State, anything in any former Act of Assembly to the contrary notwithstanding."

Code Public Laws, article 4, section 945.

The language of the city ordinance is:

"All goods, wares or merchandise *landed* on the public wharves from on board any vessel or vessels lying at said wharves, or *placed thereon* for the purpose of shipment or exposure for sale, shall pay the following rates of wharfage for each and every day the same may remain thereon."

Baltimore City Code, article 22, section 59.

Both by Statute and ordinance wharf charges are distinctly limited to cases where goods are *landed* upon some wharf *owned* by the municipal corporation, or placed thereon for shipment or sale. Wharfage is charged only where services are rendered; and the extent of the service is made the measure of compensation.

No attempt is made to force vessels to receive or discharge cargo at wharves owned by the municipal corporation. All are left free to resort to any of the numerous private wharves in the harbor; and when they do so, the city has no claim for wharfage. In the one case as in the other, it is the use of the wharf *as property* that fixes the liability for wharf charges. The rates of wharfage established by the city ordinance were intended to be, and in point of fact are, nothing more than compensation for the use of property. They are simply regulations of property by its owner, and in no sense

regulations of commerce. The right to exact them is an attribute of ownership.

Dugan vs. Mayor, &c., 5 Gill & John. 357.
Case of State Freight Tax, 15 Wall. 277.
Marshall vs. Ficksburg, 15 Wall. 146.
Steamship vs. Port Wardens, 6 Wall. 31.
Passenger Cases, 7 How. 402.
Cooley on Taxation, page 62.
Packet Co. v. Keokuk 95 U. S. 84

Resting, as the right to charge wharfage does, upon the fact of ownership, it includes necessarily the right to exempt from such charges either persons or property, at the pleasure of the wharf owner.

It is as clearly the right of the owner to exempt altogether as it is his right to charge different rates of wharfage upon the various kinds of merchandize. The appellant has no better right to complain of the one form of discrimination than of the other. His obligation to pay wharf charges, results altogether from his voluntary use of the appellee's property, with full knowledge of the rates established by the owner for such use, and he cannot escape this obligation by showing that the owner grants the free use of the same wharf to some one other than himself, or would even permit him to use it, without charge, for the purpose of landing some particular sort of merchandize, in which such wharf owner supposes itself peculiarly interested. As well might he refuse to pay for ship stores or other supplies purchased by himself, upon the ground that some other ship owner is able to obtain his from the same dealer at lower rates, or without paying anything for them.

II.

Upon no possible theory of this case can the wharf charges complained of be regarded as "imposts or duties upon imports" within the meaning of section 10 of article 1 of the Constitution.

If they were, in fact, *taxes* or *duties* imposed or levied directly upon the appellant's cargo of *Virginia* produce, they would not be in violation of this provision of the Federal Constitution, the operation of which is confined to "goods imported from *foreign* States," and confers no immunity from State taxation upon goods brought from a sister State.

Woodruff vs. Perham, 8 Wall. 136.

III.

Nor are the privileges or immunities of the citizen in any way involved in this legislation.

The State has the undoubted right to reserve for its own citizens the exclusive use of property which it holds for their common benefit, and whatever right its citizens might have in such case, would be a "property right, and not a mere privilege or immunity of citizenship."

McCready vs. State, 94 U. S. 391.
Conner vs. Elliott, 18 How. 594.
Downham vs. Alexandria, 10 Wall. 175.

The right to grant the free use of wharves, owned, as these are, by the city of Baltimore, for landing the productions of the State, rests upon precisely the same principle, viz: the right of the proprietor to do as he pleases with his own property.

The municipal corporation owning these wharves, has seen fit to grant the use of them, free of charge, to all parties landing the productions of the State of Maryland. In this way, Maryland farmers may be enabled to market their crops in Baltimore city at less expense than those from other States, but this is because they, or the public corporation representing them, own property which the others do not.

JAMES L. McLANE,
City Counsellor,
For Appellee.

5. Gill v Johnson